

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT ARCHIBALD :

Plaintiff, :

-against- :

U.S. BUREAU OF PRISONS, :

Defendant. :

-----X

09 Civ. 8970 (LTS) (HBP)

REPORT AND
RECOMMENDATION

PITMAN, United States Magistrate Judge:

TO THE HONORABLE LAURA TAYLOR SWAIN, United States
District Judge,

The plaintiff commenced this action on October 23, 2009 by filing a summons and complaint. My review of the file in April, 2010 disclosed that no proof of service of the summons and complaint had ever been filed and it appeared that the summons and complaint had not, in fact, been served. Accordingly, I issued an Order to plaintiff on April 28, 2010 directing that plaintiff show cause on or before June 28, 2010 why the action should not be dismissed for failure to serve the summons and complaint within the 120-day time limit established by Rule 4(m), Fed. R. Civ. P. Specifically, my April 28, 2010 Order provided:

Despite the fact that Rule 4(m), Fed. R. Civ. P., requires that the summons and complaint be served on all defendants no later than 120 days after the commencement of the action, according to the Court's records, the defendant has not yet been served. Accordingly,

pursuant to Federal Rule of Civil Procedure 4(m), it is hereby

ORDERED that plaintiff has until June 28, 2010 either to complete service of the summons and complaint on the defendants or to show good cause why such service has not been made. Failure to complete service or to show cause on or before June 28, 2010, will result in the issuance of a Report and Recommendation recommending the dismissal of this action.

(Emphasis in original.)

A copy of my April 28 Order was electronically transmitted to plaintiff's attorney, Carlos Moreno, Esq., via ECF on April 29, 2010.

To date, plaintiff has not filed proof of service, has not explained why service has not been completed and has not contacted my chambers or the Court in any way. Accordingly, I respectfully recommend sua sponte that this action be dismissed on the ground that plaintiff has not completed service of the summons and complaint within the time permitted by Rule 4(m), Fed. R. Civ. P.


OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Laura Taylor Swain, United States District

Judge, Room 755, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Swain. FAILURE TO OBJECT WITHIN TEN (10) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York
October 29, 2010

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copy transmitted to:

Carlos Moreno, Esq.
Moreno Law Office, P.C
352 7th Avenue, Suite 1204
New York, New York 10001